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*Working to protect and restore Western Watersheds*

USDA – FS

EMC Administrative Reviews

1400 Independence Ave. SW - Mailstop 1104

Washington, DC 20250



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March 22, 2014

**Objection to the Shoshone Forest Plan Draft Decision  
Issued by Forest Supervisor Joe Alexander**

Western Watersheds Project submitted comments to the DEIS. These objections follow closely the issues raised in those comments.

It does not appear that the Forest Service has implemented FSM 2621.2 or FSM 2672 and 2676. 2670.45 and 2672.32 are of particular importance.

2621.2 - Determination of Conservation Strategies. To preclude trends toward endangerment that would result in the need for Federal listing, units must develop conservation strategies for those sensitive species whose continued existence may be negatively affected by the forest plan or a proposed project.

The proposed Forest Plan does not implement these requirements. The final Plan must fully implement these requirements.

2622.01 - Authority. In the USDA Decision of Review of Administrative Appeals of the Beaverhead National Forest Land and Resource Management Plan of August 17, 1989, the Office of the Secretary interpreted the requirements of 36 CFR 219.19 and DR 9500-4 (sec. 2620.1) to require that plans should identify or be amended to identify known sensitive species and provide forest standards and guidelines that ensure conservation when an activity or project is proposed that would affect the habitat of a sensitive species. A forest plan must address biological diversity through consideration of the distribution and abundance of plant and animal species, and communities to meet overall

multiple-use objectives.

1. Management direction in a forest plan shall contribute to the recovery of Federally listed threatened or endangered species (Endangered Species Act, 36 CFR 219.19).

2. Management of habitat provides for the maintenance of viable populations of existing native and desired non-native, wildlife, fish (36 CFR 219.19), and plant species (USDA Regulation 9500-4) generally well distributed throughout their current geographic range (sec. 2620.01).

3. Management of those plant and animal communities identified in Regional Guides or Forest Plans as issues that warrant special measures achieves overall multiple-use objectives (36 CFR 219.8, 219.12(b), 219.27).

4. Management direction in a forest plan shall include objectives for selected management indicators (36 CFR 219.19). Specify the following for plant and animal species, communities, and/or special habitats identified as major Forest Plan issues or as management indicators in the plan:

a. Standards and guidelines for protection, viability, recovery, or restoration as appropriate to meet overall multiple-use objectives (36 CFR 219.27);

b. The expected future conditions in terms of distribution and abundance of populations or habitats to meet overall multiple-use objectives (36 CFR 219.11; 219.26);

c. The schedule for monitoring and evaluation of standards, guidelines, and objectives for plant and animal species, communities (36 CFR 219.27); and

d. The discussion of any proposed type conversions. If any conversion results in a reduction in diversity, explanation must be provided as to why the conversion is necessary to achieve multiple use objectives (36 CFR 219.27).

2623 - QUANTIFYING OUTPUTS AND VALUES. In all Forest plans and project level plans, express habitat objectives, outputs, and effects in quantitative terms using the following data elements:

1. Habitat Capability. Use habitat capability to specify habitat objectives and to project outputs and cumulative effects. Report habitat capability as the net change in potential numbers of animals (or biomass of fish) that can be supported within the area of evaluation (emphasis added)

The Forest Plan fails to comply with these highlighted requirements. For example, the Forest Plan does not contain Standards and Guidelines necessary to protect amphibian species listed as Sensitive Species. We attach an analysis of the habitat needs for amphibians. So while the Forest Plan states a general goal in SENS-GOAL-01 you will notice that no Standards and Guidelines have been provided that implement this goal for amphibians listed as Sensitive Species. The primary impact to Sensitive amphibian habitat is domestic livestock grazing but the Forest Plan fails to implement any Standards at all related to livestock grazing. The utilization Guideline allows use to 3” in ‘spring use

units' (undefined) and 4" in all other use periods in riparian areas as measured only on carex species. But this does not provide for amphibian habitat (see attachment). Therefore, the Forest Plan does not comply with these requirements and must be revised to include Standards and Guidelines to protect all Sensitive Species and their habitats.

2676.12 2. Eliminate preventable mortality of grizzly bears and minimize the potential for grizzly bear-human conflicts on National Forest System lands.

The Forest Plan does not "eliminate preventable mortality" nor does it "minimize" conflicts. Little is done inside the PCA to implement these requirements and only voluntary measures outside the PCA.

2670.12 Departmental Regulation 9500-4. This regulation directs the Forest Service to:

1. Manage "habitats for all existing native and desired nonnative plants, fish, and wildlife species in order to maintain at least viable populations of such species."

For many of the Sensitive Species, the Forest Service has no data to determine if they are currently viable let alone make determinations that they will remain so under the proposed Forest Plan. The Forest Service lacks the data necessary to make the determinations they have made, making the proposed ROD arbitrary decision making. The Forest Service needs to collect the data necessary to make a scientifically defensible determination of viability.

2670.22 3. Develop and implement management objectives for populations and/or habitat of sensitive species.

The proposed Forest Plan fails to implement this requirement. For instance, the Forest Service has failed to "develop and implement management objectives for populations and/or habitat of sensitive species" such as amphibians, water voles or other species. The Plan needs to be revised to comply with this requirement.

2670.31 6. Identify and prescribe measures to prevent adverse modification or destruction of critical habitat and other habitats essential for the conservation of endangered, threatened, and proposed species. Protect individual organisms or populations from harm or harassment as appropriate.

The USFWS defines take as "For example, "harm" is further defined by regulation (50 CFR 17.3) to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. "Harass" is defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering."

In a recent grizzly bear BO, the USFWS stated:

The habitat modification of adding a significant potential food source that results in the death or injury of bears is "take" in the form of harm. That is, grazing

livestock as part of the proposed action is a significant modification to grizzly bear habitat, which includes sheep and approximately 46,100 Animal Unit Months of cattle, that potentially presents a substantial food source for grizzly bears. The likely depredation of some of the permitted livestock represents an impairment of natural feeding behavior that will in some cases ultimately lead to management removal or death of grizzly bears. Grazing and associated activities also have the potential for other adverse effects to grizzly bears (e.g., displacement, habituation, increased exposure to other potential sources of mortalities, etc.).

The Forest Plan fails to implement Standards and Guidelines to “Identify and prescribe measures to prevent adverse modification or destruction of critical habitat and other habitats essential for the conservation of endangered, threatened, and proposed species.” All currently stocked livestock grazing allotments within grizzly habitat results in “take” because “grazing livestock as part of the proposed action is a significant modification to grizzly bear habitat”. Therefore the Forest Plan fails to comply with 2670.31 6 and must be revised to comply with this requirement.

- 2670.45 2. Develop quantifiable recovery objectives and develop strategies to effect recovery of threatened and endangered species. Develop quantifiable objectives for managing populations and/or habitat for sensitive species.
3. Make recommendations to the Regional Forester for critical or essential habitat designation on National Forest System lands.
4. Determine distribution, status, and trend of threatened, endangered, proposed, and sensitive species and their habitats on forest lands.

The proposed Forest Plan fails to include quantifiable recovery objectives either for ESA listed species or Sensitive Species. For example, one of many, there are no “quantifiable objectives” for populations or habitat of Sensitive amphibian species.

No recommendations for critical or essential habitats have been made or even discussed in the proposed Plan. Further, neither the EIS nor the Plan has determined “distribution, status, and trend of threatened, endangered, proposed, and sensitive species and their habitats”. Merely determining “distribution, status, and trend” for one or two species does not comply with the above requirement. The Plan must be revised to comply with 2670.45 2.

It appears the capability/suitably failed to remove soil types listed in the R2 Capability/Suitability direction document. See attached.

Subtract soil types that are dominated by a large percentage of rock outcrop and rubbleland, loose granitic or highly erosive soils<sup>1</sup> or very wet and boggy soils.

It also appears to have not removed unsuitable lands such as high recreation areas, water supplies and the like.

1909.12 11.14.3 states regarding unsuitability “The use is incompatible with the desired conditions for the relevant portion of the plan area.”

1909.12 11.3 also appears to have not been implemented. Riparian areas are just one example of “where ecological conditions are fragile or subject to major ecological disturbances.” But the proposed Plan fails to implement effective actions to protect these areas. For instance, a 3-4” stubble height does not protect riparian areas.

Bighorn sheep are a FS listed Sensitive Species. The state’s bighorn sheep domestic sheep working group output does not alter the Forest Service’s legal responsibilities regarding bighorn sheep either from the perspective of viability or as a Sensitive Species. Currently, bighorn sheep are not distributed across the planning area and the remnant population at the southern end of the Winds is by no means viable.

The Bighorn Sheep Risk Assessment states “Suitable bighorn sheep habitat within these domestic sheep allotments on the Shoshone is very limited as a vast majority of the land is forested and within occupied habitat of gray wolves.” This logic is flawed because wolves and bighorn sheep have coexisted for millennia. Occupied wolf habitat does not eliminate bighorn sheep habitat. Further, look at the Temple Peak summer range along the divide and its winter range on the Lander Slope, the same “forested” land is between the two. Also look where the ram was recently shot and summer range in conjunction with the remaining domestic sheep allotments. The EIS failed to address these issues.

The report also states “The closest portion of the remnant Temple Peak herd is about 28.9 km from the domestic sheep allotments on the Shoshone.” This is false. In addition, the map of ‘occupied’ habitat relied on for this analysis is highly inaccurate. As I have reported to the FS and G&F I have personally observed bighorn sheep from Wind River Peak, north to Whiskey herd nearly every year from present through the mid 1970’s. The corridor between the summer range along the divide and the winter range along the Lander Front is within 2 miles of the open domestic sheep allotments.

The statements “The disease transmission risk from domestic sheep to this cooperative review bighorn sheep herd is Very Low due to livestock grazing on the Shoshone.” And “Bighorn sheep from the Temple Peak herd have made intermittent forays to active domestic sheep allotments on the Bridger-Teton National Forest. In addition, due to the unknowns that can occur from domestic sheep grazing on private land and the Wind River Reservation, the risk of disease transmission to this herd is increased from Very Low to Low to Moderate.” are baseless fiction. Even if one were to do the analysis based on the last 10 years, instead of predicting the next 10 years, the category would be “very high”. As a result, the assumptions in the EIS are flawed and must be revised.

The draft plan states on page 16, that “New direction is needed to improve critical wildlife habitat and to prevent negative impacts on riparian areas. New management direction that expands the use of forage reserves and other approaches are needed.” Yet the ‘direction’ provided is nearly identical to or even more limited than the previous Forest Plan. No Standards and Guidelines have been provided for “critical wildlife habitats” or to prevent negative impacts on riparian areas.

The Plan states “Conflicts between livestock and large predators are minimized to the extent possible” but then fails to implement any changes to reduce conflicts. There are a wide range of actions the Forest Service could require to minimize “to the extent possible” conflicts between livestock and predators such as tight herding, not allowing

calves, guard dogs, removal etc, but the Plan does none of these. In fact it leaves in place a situation where conflicts are resolved by 'removing' the predators to benefit livestock.

The Plan states "The Shoshone is currently experiencing a warming trend that is expected to accelerate in the next century (Rice et al. 2012). Climate change can have many effects on the functioning of the complex ecosystems of a forest. Climate change may be accompanied by rising temperatures, changes in the length of the growing season, changes in amounts and timing of precipitation, increases in water temperature, and other variations. The projected changes in climate will affect the availability, extent, and location of wildlife habitat, and may affect the species dependent on various vegetation types." Yet the Forest completely ignores this issue in every aspect of the plan including livestock grazing, Sensitive Species management, hydrology, vegetation, etc. Its as if someone on the IDT demanded that global warming be discussed but the decision-makers completely ignored the implications of global warming on any aspect of resource management because of the inconvenience it may cause to resource extraction industries if it were dealt with.

I am attaching the just published Beschta et al. paper that provides an excellent literature review on global warming impacts and management recommendations to adapt.

The draft plan starts to provide goals, objectives, standards and guidelines. Unfortunately nearly all of these fail to provide the specificity necessary for proper management. For instance in the water and soils section we see "restore and maintain healthy watersheds" but this is not translated into actionable and useful direction because no information is provided on which areas need restoration and which should be maintained in their present condition.

Again in the soils section the plan states "soils are maintained or improved" but there is a vast difference between maintaining and improving and this level of specificity must be provided in the plan for it to be useful.

The discretionary guideline #1 fails to require the collection of baseline data on which the 70% could be measured. There is no direction regarding the primary impact to soils and water quality throughout the forest which is livestock grazing.

The Plan states that "soil capabilities, potentials and limitations are appropriately considered in designing management activities" yet this has not occurred in the grazing capability and suitability analysis. This is arbitrary decision making.

In the vegetation section, the documents states "impacts from insects and wildfire has dramatically changed the vegetation conditions since 2000." But then continues this section with this standard Forest Service line that there is a need for more young age classes and that there is an overabundance of older age classes. This is of course false. The Forest has had the largest seral shift (to early seral) since the European invasion but because that gets in the way of 'active management' it completely dismisses the implications.

Interestingly, we see high level of specificity in the snags per acre requirements in this section and yet this level of specificity is completely lacking in the primary source of

impacts on the Forest which is livestock grazing.

The Plan states "in areas where dry meadows and upland plant communities, including the Kentucky bluegrass types, having invaded into wetland-riparian areas, management allows for their replacement over time by native plant communities to the extent practicable" yet the plan fails to provide any direction that would accomplish this. In fact, the plan continues same old Forest plan direction that has led to this situation. 3-4" stubble height, the only 'guideline' that would deal with this issue allows such heavy livestock use that such conditions will be perpetuated. The EIS certainly presented no rational basis to conclude that a 3-4" stubble height would fulfill the above objective.

Further, this same section states that "riparian vegetation composition and structure are similar to what would be expected with natural disturbance processes" again the plan provides no requirements that would result in this occurring.

Goal 8 aspires to have riparian and wetland habitats in "proper functioning condition" but this term does not relate to Forest Service requirements such as "robust stream health" as defined in the Watershed Conservation Practices Handbook. "Proper functioning condition" is defined in interagency publications as merely the minimum physical functioning to withstand a 20 year flood event and as described in the technical reference for this methodology is well below the level needed to provide water quality wildlife habitat or fisheries. (See TR 1737-15 pages 15-20)

None of the objectives, standards or guidelines within the proposed plan deal with the common situation of plant community shifts due to livestock grazing impacts from grazing intolerant, decreaser species to grazing tolerant increaser species. From both upland and riparian perspectives (deep rooted riparian species to POPR and dandelion) this is the primary issue which the Plan entirely ignores.

There is a very significant difference between a riparian utilization rate of 50% and a 4 inch stubble height. The Forest Service needs to review published literature including its own regarding this issue and clarify these requirements. The requirement needs to be measured using a quantifiable methods and not through ocular estimates.

This same section conflates the issue of streambank stability with stream bank alteration. This section deals with annual move on use criteria so a long-term parameter such as stream bank stability is inappropriate. Stream bank alteration is the appropriate measure here. As an attachment I am providing a recent literature review on this issue developed by the Bridger Teton National Forest.

The guideline also state that livestock grazing impact should not occur in fens, but does not eliminate livestock grazing in fens. So you have a guideline that no livestock impacts should occur to fens but nothing that implements this requirement. So it looks good on paper as if the Forest Service was doing its job but on paper is where it will remain without clear requirements translating it into action. In addition, of particular importance is that none of these are standards, they're all merely guidelines.

Table 6 provides upland utilization limits but provides no information regarding the Forest Service's ability to statistically differentiate between 50% and 40% or 40% and

35% utilization rates. In fact, it appears that the Forest Service is relying on ocular methods which are far too inaccurate to differentiate between these figures.

There is no discussion in the EIS or in the proposed plan regarding the environmental impacts of these utilization rates. For instance, the primary range management textbook by Holechek when discussing the standard 50% utilization rate states that this is inappropriate because "the coniferous forest range type in the West is easily damaged by grazing because of rugged terrain that causes livestock, particularly cattle, to concentrate in the flatter, more convenient areas." The author continues by reviewing the literature on utilization rates and recommending a 25% utilization rate for livestock within situations such as the Shoshone national Forest.

In a paper by the same author, he states "The general guideline of take half and leave half of the current season's growth recommended by early range managers appears applicable only to humid and annual grassland ranges."

The failure to address this issue violates NEPA.

Another flaw with the current approach is the usual "meeting or moving toward" that the Forest Service universally uses. There is a vast difference between "meeting" and "moving towards". Nearly all rangeland in the western United States have been severely degraded by livestock grazing over the last 130 years. The state that something is "moving toward" means very little. For instance, a particular area may be in a very poor condition and the fact that it may have been measured as improving somewhat since the nadir from the 1920s through the 1970s is of little value, but under this Plan it is in "satisfactory" condition. This is of course inappropriate from a management perspective. Meeting means something very different than moving towards with no distance or timeframe. They can not be both conflated to mean the "satisfactory" condition has been met.

Throughout the proposed plan, the Forest Service states that it will manage towards "desired conditions" but the definitions of these "desired conditions" are so general as to be completely meaningless from a management perspective. Nearly anything could meet the proposed definitions of "desired conditions". Desired conditions must be measurable in order to be of any management utility.

In the ESA listed wildlife section, we see this same approach where for ESA listed species the Forest Service merely seeks to "maintain" the status quo instead of complying with the ESA which requires the agency to use all available methods to recover ESA listed species, not merely maintaining the status quo.

This is echoed in the goals which are only for the "survival" of ESA listed species. When goals are worded in such a fashion the lower bar of the two is what prevails. So in practice, the Forest Service is merely seeking to maintain the status quo for these threatened and endangered species not manage for full recovery. This is inappropriate management and does not comply with the ESA.

In the standards in this section, it states that management actions that have "adverse effects" on ESA listed species will not be permitted if the action would "contribute to a

loss of viability of the species" but provides none of the required information that would be needed for implementation. For instance what is the scale? Is it viability for the species as a whole which may range over the entire western United States? Is it regional viability? Isn't viability on the Forest unit? Or is that viability within the area of analysis?

Inside the grizzly bear PCA, the standard requires that the Forest Service "minimize" conflicts but does not define what these "other management tools" are. As a result of the lack of direction these "other management tools" will never be applied. Further, nothing requires the implementation of actions to resolve predator conflicts outside the PCA.

This section likewise provides no direction regarding predator control actions for the sole benefit of livestock permittees funded by the federal government. The Plan continues to allow predator (even ESA listed predators) 'removal' as the primary means of minimizing conflicts. So the Plan minimizes conflicts by minimizing wildlife (even ESA listed wildlife) for the benefit of private domestic livestock.

The proposed plan allows for "nonuse agreements" with "willing permittees" but does nothing to require closing of allotments where changes have been ineffective at reducing livestock predator conflicts.

In addition, the plan fails to implement the management emphasis of the various DFCs. For instance, grizzly bears and other similar species are treated just the same in terms of conflicts in DFCs that have a wildlife emphasis as opposed to those with a resource extraction emphasis. This is inappropriate management. The basic result is that DFCs are meaningless.

The MIS section uses the proxy on proxy approach which has been ruled illegal in the 10th circuit.

The management approach regarding insects and diseases appears to utilize the debunked the myth that cutting trees somehow prevents or controls beetle infestation expansion. Even the Forest Service's own research has demonstrated the myth to be false. We provide a few of these papers for your review as attachments. The Forest Service has ignored Best Available Science.

In the livestock management section of the Plan, the Forest Service defines an AUM as 780 pounds of forage by utilizing a cow weighing 1000 pounds. Unfortunately livestock weights have increased dramatically over the last 30 years and a typical cow grazing on public lands weighs nearly 30% more than this. In addition, with the earlier calving, calves grazing the forest generally consume one third or more of the forage consumed by an adult. We provide, and probably have already provided but it was ignored, a recent review on this issue.

The capability and suitability analysis provided for the Forest plan fails to take into consideration the requirement to provide this same process for MIS species.

In the requirements dealing with livestock grazing in designated Wilderness areas we see that the Forest Service is allowing construction of new range "improvements" within Wilderness in violation of the Wilderness Act. In addition, we see that the Forest Service

states that "existing livestock grazing may continue at existing levels" but fails to provide any requirements regarding reduction in livestock grazing where impacts to Wilderness values are occurring. In other words, the direction for livestock grazing in designated Wilderness is even weaker than elsewhere in the Forest.

The same problem is seen in the section dealing with RNA's which by their very definition cannot have the impacts of livestock grazing and provide the values for which they were designated. Yet the Forest Service only eliminates livestock grazing where it has already been eliminated and provides no direction or requirements to deal with livestock grazing that is currently occurring within these areas.

Please let me know about opportunities for potential resolution.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jonathan B Ratner". The signature is fluid and cursive, with the first name "Jonathan" written in a larger, more prominent script than the last name "Ratner".

Jonathan B Ratner  
Director – Wyoming Office